

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Emergency Determination of Endangered Status and Designation of Critical Habitat for *Astragalus yoder-williamsii*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Service determines the Osgood Mountains milk-vetch (*Astragalus yoder-williamsii*) to be an Endangered species and an area on Bureau of Land Management land in Humboldt County, Nevada, to be its Critical Habitat. The species also is found in Owyhee County, Idaho. Mining development threatens the integrity of the species' habitat and hence poses a significant risk to the survival of the plant. This emergency rule will provide the Endangered Species Act's protection to this species for 240 days.

DATES: This emergency determination for the species and designation of its Critical Habitat will be effective on August 13, 1980, and remain in effect until April 15, 1981.

ADDRESSES: Interested persons or organizations can obtain information from the Area Director, U.S. Fish and Wildlife Service, Room E2730, Federal Building, 2800 Cottage Way, Sacramento, California 95825; telephone 916/484-4664.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240; telephone 703/235-2771.

SUPPLEMENTARY INFORMATION:**Background**

Astragalus yoder-williamsii is known only from eastern Humboldt County in northern Nevada and from southeast of Black Butte in Owyhee County, southwestern Idaho. It was first collected in 1977 and was recognized as a new species from a second collection in 1979. It was formally named and described as a new species earlier this year (Barneby 1980). It is found on exposed ridge crests and flat plateaus of decomposed granite gravel or sandy soil derived from granodiorite parent material, at elevations of 1890-2230 meters. The Nevada population, in the northern Osgood Mountains, is estimated to number about 500

individual plants. The Idaho population was composed of less than ten plants in 1977. Searches undertaken in 1979 and 1980 for other populations of the species in both states have been unsuccessful.

At both locales where this species occurs there are recent mining claims, and assessment work on the claims in Nevada appears imminent. The Nevada population is on land managed by the Bureau of Land Management (BLM), while the Idaho population is mostly on BLM land and also on some private land. The BLM has requested that this emergency rule be enacted, in a letter to the Director dated July 1, 1980. The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Summary of factors affecting the species: Subsection 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) states that the Secretary of the Interior shall determine whether any species is an Endangered species due to one or more of the five factors described in that subsection. This authority has been delegated to the Director. These factors and their application to *Astragalus yoder-williamsii* Barneby are as follows:

1. *Present or threatened destruction, modification, or curtailment of its habitat or range.* This species appears to be restricted to a few granodiorite outcrops in north-central Nevada and southwestern Idaho. The larger population on about 20 acres of BLM land in eastern Humboldt County, Nevada, is located east of Soldier Cap and southwest of the Gatchell Mine, in the northern Osgood Mountains. The population lies within mining claims of a private corporation, which were filed in 1974. This June, the majority of these claims were leased to a private company which indicates they will carry out assessment work this summer. The claims lie on deposits of a tungsten and gold ore. The ore deposits are immediately to the west and north of this population of the species. Considerable mining excavations occur within one mile of the population in all directions, a road passes through the population, and past mining assessment cuts have been made in the species' habitat (Yoder-Williams 1980). Considerable care will be necessary to avoid further damage to the species in assessment work and development of these mining claims.

The smaller population in southwestern Idaho is in Owyhee County, 4.5 km SSE of Black Butte and 14.5 km E of Triangle. It was discovered in June 1977, but plants could not be

found in the area this June. The population is on some private land but mostly on land managed by BLM; mining claims for the area were filed this April. Barneby (1980) indicates that there are morphological differences between plants at the two sites, but he places them in one species.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

3. *Disease or predation* (including grazing). Grazing has occurred on the species' habitat. This grazing does not appear to threaten the species.

4. *The inadequacy of existing regulatory mechanisms.* There currently exist no State or Federal laws protecting this species. The BLM has advised us that it intends to set aside the Nevada habitat for this species as an Area of Critical Environmental Concern, under the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579), section 102(a). The Endangered Species Act of 1973, as amended, offers additional possibilities for protection of *Astragalus yoder-williamsii*.

5. *Other natural or man-made factors affecting its continued existence.* Any human pressure on this species may exaggerate the possibility of small populations going extinct through natural population fluctuations.

Critical Habitat

The Act defines Critical Habitat to include (a) areas within the geographical area occupied by the species at the time that species is listed which are essential to the conservation of the species and which may require special management considerations or protection, and (b) specific areas outside the geographic area occupied by the species at the time, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Critical Habitat for *Astragalus yoder-williamsii* is as follows: Nevada, Humboldt County, the immediate ridge area on both sides of Burma Road at the summit, in the northern Osgood Mountains, excluding the existing roadways of Burma Road and the road to the Alpine Mine. The exact boundaries are the N $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, and the SW $\frac{1}{4}$, SE $\frac{1}{4}$, and NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of section 6, T38N R42E, and the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of section 31, T39N R42E.

It is anticipated that these areas will provide the species with the necessary requirements for survival and conservation. The Idaho site of the species is not included in Critical Habitat because plants could not be relocated there in field work recently undertaken. Nevertheless, it is protected

through the jeopardy provision of Subsection 7(a)(2) of the Act should plants be found there.

Subsection 4(f)(4) of the Act requires, to the maximum extent practicable, that Critical Habitat designations be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or those Federal actions which may be impacted by such designation. Such activities are discussed below for this species. It should be emphasized that Critical Habitat designation may not affect each of the activities listed below, as Critical Habitat designation only affects Federal agency actions through section 7 of the Act.

Two activities are planned in the area of the designated Critical Habitat. The BLM intends to designate an Area of Critical Environmental Concern for the species, as discussed above under threat factor four, and it may fence this area. This action appears fully compatible with the Subsection 7(a)(1) responsibilities BLM will now have for this Endangered plant.

Second, Pinson Mining Company, working with Cordex Exploration Company, plans further assessment work on mining claims at the Nevada site this summer. In June of this year, the majority of these claims were leased to Cordex Exploration Company by Utah International, Inc., a division of the General Electric Corporation. Access to the ores on BLM land is regulated by the Mining Law of 1872. The effect of this species' listing and Critical Habitat designation on the mining activity is currently under review (cf. BLM, m.d.; Sheridan 1978). It is clear that future mining assessment work and development of the claims could cause severe decreases in available habitat for the species, as well as direct loss of individual plants. Cooperative efforts so as to avoid damage to the species and its habitat are certainly indicated.

Effects of This Rule

In addition to the effects discussed above, the effects of this emergency rule include, but are not necessarily limited, to those mentioned below.

Subsection 7(a)(2) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered. Provisions for Interagency Cooperation implementing this subsection are codified at 50 CFR Part 402. New regulations to accommodate amendments to Section 7 are in

preparation. This emergency rule requires Federal agencies to insure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of this species, or to result in destruction or adverse modification of its Critical Habitat. Since the BLM has requested this emergency rule, it appears it intends to readily comply with the effects of this subsection to the extent that it has discretionary powers to exercise.

The Act and implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32373-32381) set forth a series of general trade prohibitions and exceptions which apply to all Endangered plant species. The prohibitions are found at Section 17.61 of 50 CFR and are summarized below. With respect to *Astragalus yoder-williamsii*, all prohibitions of Subsection 9(a)(2) of the Act, as implemented by Section 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR Sections 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species, under certain circumstances. No such trade in this *Astragalus* is known. It is anticipated that no permits involving the species will be requested.

Subsection 4(f)(2)(C) of the Act provides the authority for this emergency rule, which is effective for 240 days. During that time period, the Service intends to carry out the regular proposed and any final rulemaking procedure for this species, as required by the Act, in order to replace this emergency rule with appropriate long-term legal protection for the species. The Governors of Nevada and Idaho have been notified of this emergency rule, in accord with Subsection 4(b)(1)(A) of the

Act and our regulations in the February 27, 1980, **Federal Register** (45 FR 13025), to be codified at 50 CFR Part 424, Section 424.19.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this emergency rule. It is on file in the Service's Area Office, Room E2740, Federal Building, 2800 Cottage Way, Sacramento, California, and may be examined by appointment during regular business hours. A determination has been made that this emergency rule is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

This rule is published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, 92 Stat. 3751, 93 Stat. 1225). The primary author of the rule is Dr. Bruce MacBryde, Office of Endangered Species, Washington, D.C. 20240, (703-235-1975).

References Cited

- Barneby, R.C. 1980. *Dragma Hippomanicum* VI: a new tragacanthoid *Astragalus* from Nevada and Idaho. *Brittonia*, Vol. 32, No. 1, pp. 30-32.
- Bureau of Land Management. n.d. Draft Environmental Impact Statement. Surface Management of Public Lands under the U.S. Mining Laws 43 CFR 3809. BLM, Washington.
- Sheridan, D. 1978. Mining the public wealth. *Sierra Club Bulletin*, Vol. 63, No. 3, pp. 10-13.
- Yoder-Williams, M.P. 1980. Status report on *Astragalus yoder-williamsii* Barneby. Prepared by the Bureau of Land Management and submitted to U.S. Fish and Wildlife Service, January 8, 1980.

Regulation Promulgation

Accordingly, for 240 days amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. Amend § 17.12 by adding in alphabetical order the following to the list of plants:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Fabaceae—Pea family:						
<i>Astragalus yoder-williamsii</i>	Osgood Mountains milk-vetch.	U.S.A. (ID, NV).....	E	101	17.96(a)	NA

§ 17.96(a) [Amended]

2. Also, the Service amends § 17.96(a) by adding the Critical Habitat of *Astragalus yoder-williamsii* after that of *Astragalus perianus*, as follows:

Fabaceae (*Astragalus yoder-williamsii*)

Osgood Mountains milk-vetch. Nevada, Humboldt County: The immediate ridge area on both sides of Burma Road at the summit, in the northern Osgood Mountains, excluding the existing roadways of Burma Road and the road to the Alpine Mine. The exact boundaries are the N $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, and the SW $\frac{1}{4}$, SE $\frac{1}{4}$, and NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 6, T38N R42E, and the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 31, T39N R42E.

Dated: August 7, 1980.

F. Eugene Hester,

Acting Director, Fish and Wildlife Service.

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